POLICE POWER—"EUGENIC MARRIAGE" LAWS—VALIDITY.—A statute required a certificate from a competent physician stating that a male applicant for a license to marry was free from acquired venereal disease before the license should be issued. *Held,* this is a valid exercise of the police power. *Peterson* v. *Widule* (Wis.), 147 N. W. 966.

This case raises the question of constitutionality on two points of the so-called "Eugenic Marriage Law" in Wisconsin. First, is it a reasonable classification in not requiring a similar examination to be undergone by women; and second, does it exercise an invalid restriction on the alienable right of marriage?

Distinction between the sexes has often been upheld in the exercise of the police power. *Muller* v. *Oregon,* 208 U. S. 412. Moreover, since, in the ordinary walks of life, instances of illicit sexual intercourse are more frequent in the case of men than of women and since suspicion as to chastity would more readily arise as a result of such an examination of a woman, bringing such direful consequences, the classification provided by the statute involved in the principal case could not appear otherwise than reasonable and just.

The regulation and prohibition of marriage as a measure for preserving the health and vigor of the race is eminently a field for the exercise of the police power. Without exception statutes prohibiting the intermarriage of whites and negroes have been upheld. *Lonas* v. *State,* 3 Hiesk. (Tenn.) 287; *Ex parte Francois,* 3 Woods 386, Fed. Cas. No. 5047. Likewise in the case of marriages of epileptics. *Gould* v. *Gould,* 78 Conn. 242, 61 Atl. 604. In view of the undoubted fact that the issue of marriages of persons affected with venereal diseases are defective, the principal case would seem clearly to come under the police power.

The wisdom and policy of such laws is open to question. Whether such statutes will not be productive of illicit intercourse in many cases where in the absence of the statute, marriage would have been the state, and whether it will not be a burden solely upon persons unaffected by these diseases, since persons affected could move from the State in order to marry, are questions for grave consideration. But provided they have some relation to the end desired, the policy and efficiency of laws in the exercise of the police power are matters for legislative, rather than judicial, inquiry. *State* v. *Cantwell,* 179 Mo. 245, 78 S. W. 569, affirmed, 199 U. S. 603; *Gleason* v. *Weber,* 155 Ky. 431, 159 S. W. 976.

RECORDATION—CHATTEL MORTGAGES.—A statute declared that a chattel mortgage should not be valid as to third persons unless recorded. A chattel mortgage was never recorded and the mortgagor, who still retained possession, sold the chattels to the plaintiff who had knowledge of the mortgage. *Held,* the purchaser took subject to the mortgage. *Howard* v. *McPhail* (R. I.), 91 Atl. 12.

The sole purpose of such statutes is to protect *bona fide* purchasers for value by requiring recordation of mortgages and secret liens. Accordingly the weight of authority sustains the view taken in the principal case. *Elliott* v. *Washington,* 137 Mo. App. 526, 119 S. W. 42; *Kitchen* v. *Schuster* (N. M.), 89 Pac. 261. However, there is authority, in cases in-

volving similar statutes, for the doctrine that notice of an unrecorded chattel mortgage is immaterial and a purchaser with notice acquires good title. *Kahreman* v. *Dunbar*, 152 Ill. App. 34; *First Natl. Bank of Edgerton* v. *Biederman*, 149 Wis. 8, 134 N. W. 1132. Where the statute provides that unrecorded chattel mortgages shall be void, the legislative intent is construed to be that a chattel mortgage unrecorded shall be absolutely void, and notice ineffectual. *Smith* v. *Howard*, 173 Mass. 88, 53 N. E. 143.

RESTAURANT KEEPERS—IMPLIED WARRANTY OF FITNESS OF FOOD.—A restaurant keeper served impure food to a patron who became sick therefrom. The plaintiff sued on an implied warranty of fitness. *Held*, there is no implied warranty of fitness, the action must be based on negligence. *Merrill* v. *Hodson* (Conn.), 91 Atl. 533.

In general, where articles of food are sold by a dealer or trader for immediate consumption, an implied warranty of fitness arises, that the goods are wholesome and fit for use. 2 MECHEM, SALES, § 1356. It is evident that for the warranty to arise the transaction must be contractual. But it was early established that an innkeeper in furnishing food to a guest did not act in a contractual capacity, since the business of an innkeeper was affected by a public interest, and he could not refuse food to a guest, and was subject to prosecution and punishment if he made unreasonable charges. *Newton* v. *Trigg*, 3 Mod. 328. As these conditions do not now prevail, the reason for the rule no longer exists. A sale of food by an innkeeper or restaurant keeper differs in no way from a sale by a dealer or trader. But though the reason is gone the rule remains, and by the weight of authority an innkeeper or restaurant keeper, if he serves impure food to his patrons, can only be held on the ground of negligence, he does not sell the food. *Sheffer* v. *Willoughby*, 163 Ill. 518, 45 N. E. 253; *Pantage* v. *West*, 7 Ala. App. 599, 61 South. 42.

But it has been held that furnishing liquor with a meal comes within the meaning of a statute prohibiting a sale of liquor. *Comm.* v. *Worcester*, 126 Mass. 256. And where the sale of certain foods was prohibited by statute, it was held that a restaurant keeper serving such foods to his patrons came within the meaning of the statute. *Comm.* v. *Miller*, 131 Pa. St. 118, 18 Atl. 938; *Comm.* v. *Warren*, 160 Mass. 533, 36 N. E. 308. And a recent case holds that a restaurant keeper impliedly warrants the food he serves is wholesome. *Leahy* v. *Essex* (App. Div.), 148 N. Y. Supp. 1063. This case is directly *contra* to the old doctrine and it would seem on principle the only tenable view, though the weight of authority is clearly the other way.

TIME—COMPUTATION.—A statute extended the vacation of a court from the second Monday in July to the third Monday in September, and provided that during that time the court should not hear jury trials. A jury returned a verdict upon the second Monday in July. *Held*, the verdict is valid. *Frey* v. *Rhode Island Co.* (R. I.), 91 Atl. 1.

Formerly the rule was established in England, that when time was